

TESTIMONY OF TOM FALIK, ON BEHALF OF
THE CONNECTICUT ASSOCIATION OF HOME CARE REGISTRIES
IN OPPOSITION TO HB-5313
AAC HOMEMAKER SERVICES AND HOMEMAKER COMPANION AGENCIES

Good afternoon Senator Holder-Winfield, Representative Tercyak and the other members of the Labor & Public Employees Committee. Thank you for the time to testify on this important issue. My name is Tom Falik. I am Chief Operating Officer of Euro-American Connections, LLC, and I am here today representing the CT Association of Home Care Registries (CAHCR) in **opposition to HB-5313.**

Don't Kill the Registry Model

HB-5313 is plain and simple an attempt to **kill the Registry business model in CT.** You have heard from several speakers today that Registries have been in business for 80 years in CT, and that they serve a critical role in provided **affordable in-home care** by screened and professional caregivers, and **keeping CT's elderly off of Title XIX** and out of care facilities. You have also heard that the prime motivating factor in this attempt to kill Registries is a **"turf battle"** between employee-based homecare Agencies and Registries, because Registries can provide care at a much lower cost. The employee-based Agencies say that their model should be the only homecare model in CT, but we believe that CT's elderly should have choices.

This is the **third straight year** that the CT DOL and employee-based Agencies have attempted to enact **virtually identical legislation.** We have opposed that legislation, but we have been supportive of (1) **enhanced DCP regulation** of Registries and employee-based Agencies, and (2) **Aging Committee Task Force Bills** to study the question of how Registries should be structured and regulated in CT. We have encouraged the Legislature to look at other states such as **Florida, California and Pennsylvania,** where there are robust **Registry Statutes,** which have created vibrant, well-regulated and affordable homecare solutions.

Protecting Consumers From Injury Claims By Statute and Insurance

I would like to speak to one of the rationales set forth by the DOL for this legislation: to **protect consumers from potential personal injury claims** by independent caregivers working in their homes. We agree that this is an appropriate avenue of inquiry, but we believe that adequate protection can be achieved without killing the Registry business model. Independent caregivers placed by Registries are **sole proprietors,** who are in the business of providing care for CT's elderly and people with disabilities. Under current CT statutes, **sole proprietors are not covered by Workers Compensation,** unless they elect to be so covered. In order to assure that the consumer is covered, many Registries have their caregivers acknowledge in writing that they have not elected to be covered by Workers Compensation.

Additionally, after this Bill died last year, our Registry embarked on an attempt to find **additional protection for our consumers.** After extensive research, we discovered an **insurance program** that is widely used in many states. This insurance would **provide coverage to a caregiver** for an **accident while working in a consumer's home,** eliminating the incentive for an injured caregiver to file a claim against a consumer. This insurance program **costs only a fraction** of what an Agency or a consumer would have to pay for workers comp, and provides very similar protection. This insurance program has been **approved by the CT Insurance Dept.** and, assuming that the Legislature does not kill the Registry business model, we plan to start offering this insurance, and liability insurance for all independent caregivers, this summer.

FLSA Minimum Wage and Overtime Regulations

There is another reason that this year is the exact wrong time to pass this legislation. Effective 1/1/2015, new Federal Fair Labor Standards Act (FLSA) Regulations eliminate the availability of **Companionship Exemption** and the **Live-in Domestic Service Exemption** from **minimum wage and overtime** requirements for “third-party employers” such as employee-based homecare Agencies. This will significantly increase the cost of homecare through Agencies, especially for 24/7 live-in care.

It will also encourage Agencies to distort their staffing procedures in an effort to avoid overtime. For example, in order to provide 7-day live-in care without paying overtime, an Agency would have to **rotate 3 different caregivers** to serve one client, which would be **confusing for an elderly client**, and would leave each caregiver with much less income.

However, these **exemptions are still available to consumers**, and the Supplemental Explanation contained in the new **FLSA Regulations specifically recognizes Referral Registries** and indicates that, if properly structured, the Referral Registry would likely not be considered the employer of an independent caregiver. It is my understanding that several employee-based Agencies are looking into forming sister Registries for exactly this reason.

The irony is that just as the FLSA has eliminated these exemptions for employ-based Agencies, but not Registries, HB-5313, if passed, would kill Registries in CT, and kill the last viable avenue for CT consumers to continue to obtain screened caregivers, subject to criminal background checks, while still avoiding the new FLSA minimum wage and overtime Regulations.

Independent Contractors Really Do Exist

As much as employee-based Agencies might wish otherwise, CT law has consistently held that independent contractors do exist. It is a facts based test, which must be applied to each situation. See *Jurdy v. Giardini*, Case No. 9006 EE 04, issued June 23, 2005, regarding a Registry.

Availability of Caregivers and the Underground Economy.

Elimination of the Referral Registry business model would **NOT** eliminate independent caregivers in CT. What it would do is:

- (1) Force many independent **caregivers to go underground**, bypassing the current background check and other protections provided by Referral Registries under DCP supervision;
- (2) **Reduce compliance** with Federal and State **Income Tax Laws**, since many of these underground transactions would be for cash; and
- (3) Cause many independent caregivers to leave the market entirely, rather than work for an Agency or go underground, thereby **reducing the availability of caregivers**, at a time when the demand for caregivers is rapidly expanding.

Many of those who could not afford the more-expensive employee-based Agencies would be forced to obtain limited, often insufficient, Title XIX caregiving services from, or be placed in facilities of, State-funded care sources, at an **ENORMOUS COST TO THE STATE**.

Retention of the Registry Model guarantees greater availability of caregivers and choices for seniors, and helps to hold down the State's cost to care for the elderly and people with disabilities.